

**BRIGHAM CITY PLANNING COMMISSION MEETING
TUESDAY, OCTOBER 07, 2008 – 6:30 PM
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT:	Barbara Poelman	Vice Chairperson
	Lynda Berry	Commissioner
	Paul Fowler	Commissioner
	Roger Handy	Commissioner

ALSO PRESENT:	Ruth Jensen	City Council Liaison
	Mark Bradley	City Planner
	Eliza McGaha	Secretary

EXCUSED:	Joan Peterson	Chairperson
	Deon Dunn	Commissioner
	Reese Nielsen	Commissioner

AGENDA:

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*) for items not listed on the agenda.

PUBLIC HEARING / APPLICATION #2913 / 1200 SOUTH STREET ROAD DEDICATION BETWEEN 450 WEST AND COMMERCE DRIVE / BYRON HANSEN

PUBLIC HEARING / APPLICATION #3037 / CLYDE PRICE SUBDIVISION – PRELIMINARY PLAT / 671 & 675 SOUTH MAIN STREET / CLYDE PRICE

CONTINUATION OF APPLICATION #3058 / CHANGE OF ZONE FROM MU-160 TO R-1-10 / 700 NORTH HIGHLAND / JOHN W. PARSON

DISCUSSION:

APPLICATION #3076 / REES RICHARDS SUBDIVISION – SKETCH PLAN / 637 EAST 600 SOUTH / REES RICHARDS

REGULAR MEETING:

Barbara Poelman opened the regular meeting at 6:32 p.m. Roger Handy led the Pledge of Allegiance.

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES:

Ms. Poelman asked Mr. Bradley to clarify a statement he made in the minutes. Mr. Bradley explained that statement and said it was correctly stated in the minutes.

MOTION: A motion was made by Roger Handy to approve the September 02, 2008 regular meeting minutes. The motion was seconded by Lynda Berry and passed unanimously.

Ms. Poelman asked Mr. Bradley the outcome of some items he was going to check on as stated in the minutes. Mr. Bradley said those items had been approved.

MOTION: A motion was made by Roger Handy to accept the September 16, 2008 work session minutes. The motion was seconded by Lynda Berry and passed unanimously.

MOTION: A motion was made by Roger Handy to approve the September 16, 2008 regular meeting minutes. The motion was seconded by Paul Fowler and passed unanimously.

Ms. Berry asked Mr. Bradley if he had found out any information on the dedicated open space as discussed in the September 16, 2008 minutes. Mr. Bradley said he would report on that at the next meeting.

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*):

Karla McArthur came forward and stated she appreciated the Planning Commission meeting and the opportunity for the citizens of Brigham City to have input into the plans and development of the city. She stated that on April 1st and April 15th there were very heated meetings with many feelings and emotions expressed over the Chad Thompson development. She said they had several concerns and after many hours of studying and searching, on their part, they presented code and safety issues to the Planning Commission. During that final meeting there were three items decided upon that have not been followed through with the developer because Hansen Engineering had not incorporated those items into the final plans that have now been approved by the City. Ms. McArthur said she came to realize this on October 6, 2008 when she saw curb framing and cement work being done that did not match the plans in her possession, which she thought had been corrected.

Ms. McArthur stated that she went to the City Planning Division and met with Mr. Mark Bradley. Mr. Bradley showed her the plans that were being used. She said it appeared as if the decision and conditions placed on the development had not been implemented; which were conditions the Planning Commission put on them. Those conditions were to change the 3-foot fence to 4-feet. The Code, 29.26.150 was discussed also. Ms. McArthur read that code. *Parking lots with five (5) or more spaces must have a minimum ten (10) foot wide landscaped strip adjacent to any road right-of-way. Exterior perimeters of the parking lot shall have a minimum five (5) foot wide landscaping strip.* Ms. McArthur said they had a detailed discussion about that. She said the third item is a parking lot change, which moved it closer to her west property line. She asked if there was still room for trees. In the buffer area, where six cars pull in to the stalls facing Ms. McArthur's yard, there will be 5-feet of grass and she asked if a vinyl fence there would be adequate now. In regards to the fence, Ms. McArthur said it is not too late to change. She said after she called and talked to Mr. Bradley, he called and talked to the attorney and Jared Johnson and they said the fence will be changed to 4-feet and Chad Thompson will know it has to be done. Ms. McArthur stated that when she talked to Mr. Thompson, he said there has been a stamp of approval from the City and he will not have to make any changes because it has already been stamped.

Ms. McArthur said the second area is the Code. She said when she called and talked to Mr. Bradley about it, he was totally unaware of any decisions that had been made because he was not here at the time. She said he told her that they all had misinterpreted the Code. She reminded everyone of who was in that meeting including Jared Johnson, Paul Larsen, a representative from Hansen's, and no one had told them they had misunderstood the Code, including the Planning Commission. She commented that now they are being told they had misinterpreted the Code because it is too late; those changes have been made and the sidewalk has already been put in. Ms. McArthur asked that they come look at the project. She said in regards to the detention basin, they were told that from the porch there would be 7 to 10-feet before the detention basin. She measured it before this meeting and that distance is 20 to 24-inches and then it drops suddenly. That was all misquoted and was not in her complaint.

Darlene Wyatt came forward and continued reading Ms. McArthur's statement saying that *Ms. Poelman asked Mr. Thompson to address the issue in the minutes on line 666, page 13. Mr. Thompson said he would. Nothing has ever been done or addressed on this issue. She said she believed they did read it correctly and even though it may be costly, something needs to be done; codes are to be followed, they are not to be disobeyed and then ignored. The sidewalks in this area were just put in this morning so Mr. Thompson is not going to want to correct that. What is to be done and what is her next step as a citizen? She asked what the Planning Commission can do when their conditions are not addressed or what she can do, as a citizen, when governing steps and procedures are not followed.*

Ms. Wyatt also indicated that she appreciated the Commissioner's time and effort they put forth in trying to be a Planning Commission. She asked what good they are and if they are wasting their time because, on this project, not all of the conditions have been met and because of that she asked why they should even put forth their effort. Ms. Wyatt said they are very disappointed and thought they had followed the correct legal ways of expressing their concerns and then have basically had it thrown in their faces indicating that their time is of no value; just as the Planning Commission's time is of no value on this event. She said the citizens of Brigham City deserve to have their codes met because if they are not, why should she follow the codes. She said she plans on making an addition to her home and how can she be forced to follow the codes if they are not going to force Mr. Thompson to follow the codes.

Brent Wyatt came forward and stated that they really do appreciate what the City does and what the Planning Commission is for. He said they really would like to make sure that when the Planning Commission makes decisions that they really know what they are making decisions on; even if that means going out to the properties and looking at them. He commented that developers have concerns that they would like to see met, the City also has requirements they would like to see and he asked where the problem lies, within the City, when they do not mesh; is it with the Planning Commission or the City Council and who should pay for it. Mr. Wyatt asked if it should just be passed off because it is a big expense to the City or the developer and because the project has started, how do they make him tear it down. He said there are some applications at this meeting for some changes and he asked if they will follow through on the things they approve now versus what the City will approve after the Commission passes it on to them. He said it seemed like it would be of a lot better value if the Planning Commission and the City Council would work more hand-in-hand and then follow through with what they do.

Mr. Wyatt commented that he realized there is a great big book of rules that they are supposed to follow and it is really difficult for them to know everything that is in those rules, which he can appreciate because they have read through them and there is a lot of information there. He said their hope is that they will understand and perhaps go to the project to see what they had approved and see that it is not being followed as per what was requested, as well as see that their needs are met. Mr. Wyatt stated that they do not have any hard feelings against the City but if they are going to approve a project, he would like to see that it is taken care of, otherwise, there has to be some legal recourse somewhere.

He said they are not after any personal gain; they were not enthused about the project but once it was approved they have been supportive of it and kind to the owner. He commented that it is something he thinks they should spend a little more time with and he realizes their time is important and hoped they would take that as some counsel. Mr. Wyatt stated that if they don't hear or have any kind of information from this, they will probably go to the City Council with the same concerns and talk to them; hopefully they will have some feedback as to what is going on and why things would change and why they didn't.

Ms. Poelman mentioned, to those who came to express their concerns, that those concerns have not fallen on deaf ears. She pointed out that the agenda stated that no decision could be made at this time. She commented to Mr. Bradley that it would be appropriate to discuss this topic during the discussion portion of this meeting to bring up their concerns and ask him who follows through with the items that the Commission makes in their motions. Mr. Bradley commented that he thought it would be helpful for the citizens to know that the Planning Commission is an appointed body that generally makes recommendations to the City Council. They do have some land use authority to make final decisions on conditional use permits; even then the State has a lot of say on what they can and cannot do. The Planning Commission and City Council rely on the City Staff to follow through on these things to make sure they are being done. He commented that the City Staff is human, just like everyone else and there are three things Staff specifically spent some time discussing on this project.

Mr. Bradley said he spoke with Chad Thompson and he is aware of that condition and it is clear in the minutes that the fence should be moved from 3-feet to 4-feet. He has not yet done the safety fence on top of the retaining wall and Mr. Thompson said he would put that 4-foot fence on there. Mr. Bradley said the property owner was correct in that the driveway and parking lot was widened from the original plan but the adjustment that was made meets the minimum standard. Mr. Handy asked if that change was made outside of the parameters the Planning Commission set for the project. Mr. Bradley stated that he was not there but as far as the motion, according to the minutes, there was not a motion dictating the landscape strip between the property owner and the parking lot. Mr. Fowler commented that they were very specific in their recommendation not only about that strip but about the type and size of the trees and everything else to make a buffer between them and the residents. He said that was something he specifically remembered as it was corrected in the notes when they approved the minutes of that meeting. Mr. Bradley commented that the motion did not state that the strip had to be a specific size and the plan that is approved does meet the minimum standard. There is a landscape plan with reference to the trees and the caliper of the trees and, due to the power line, there are certain things that can be planted in there. Mr. Bradley said that according to the lengthy minutes there was a very thorough discussion with the Planning Commission, the applicant and the neighbors. There was some other concerns that were expressed as far as the landscaping around the parking lot and Mr. Bradley said he would be glad to show those plans to the Planning Commission if they would like to see them.

Ms. Berry asked if there would have been changes made by the City or the City Council after the Planning Commission had their discussion. Mr. Bradley replied that, as this was a conditional use permit, the City Council would not have been involved with that. There was change with the garbage dumpster and providing more space for the vehicles. Mr. Handy commented that it seemed Mr. Bradley was saying that Staff has the power to make changes outside of what has been discussed and outside of what has been approved by the Planning Commission as long as it meets State requirements. Mr. Bradley replied that Staff does have some rights to be able to work within those limitations. He said if there are specific conditions placed on an application and the applicant would like to make a change to those, then it should come back to the Planning Commission. Mr. Handy asked if every specific detail would have to be in the motion for it to be unchangeable by Staff. Mr. Bradley replied that as far as condition of approval, everything could be listed line by line through the entire subdivision and zoning ordinances but typically in dealing with a conditional use, what is being looked at are the impacts or other items that conditions are placed on. Mr. Bradley commented that

sometimes there are items that are shown on an exhibit that are not caught in the review, due to the quick turn around time between submittal and when the Planning Commission sees it. He said the Staff evaluation lists in the findings when an application is in compliance with the City ordinance and Staff does their best to review applications in accordance to that. As far as the note on the plan regarding the change from a 3-foot to a 4-foot fence; it was clearly missed. Mr. Bradley commented that there are public hearings on the agenda that need to be addressed and if the Planning Commission would like to address this further, in the discussion portion of the meeting or schedule it for further discussion, that would be their decision. Ms. Poelman commented that it would be appropriate to discuss this further at the end of the meeting to address the questions and decide, at that time, if there is a need to put it on the agenda or if Mr. Bradley needs to make contact with the developer. She said it sounded like the developer has laid the sidewalk possibly knowing that the City may not require him to remove it even though it has been placed in a manner other than what was decided upon which does not seem like a right ending.

Ms. Berry commented that if they are to discuss this further, she would like to have the minutes to review as it was quite a while ago and she did not recall all the particulars regarding the application. She asked if the City does a stop work order. Mr. Fowler commented that the plan they saw and the plan Mr. Thompson is building from are different than what the Planning Commission had approved which is where he believed the issue is. Ms. Berry recalled that there was not a 9-foot wall around the property at the time they discussed it. She said they did discuss the retention pond because she asked Mr. Thompson if people would walk out their front door and fall into it and he replied that it had a certain depth that was typical of retention ponds. She said she drove by and thought there must be no retention pond and he must not be going to put up the fence as was intended initially because he had to put up a 9-foot retaining wall. Ms. Poelman suggested further discussing the issues on this subject at the end of the meeting.

PUBLIC HEARING / APPLICATION #2913 / 1200 SOUTH STREET ROAD DEDICATION BETWEEN 450 WEST AND COMMERCE DRIVE / BYRON HANSEN:

Brigham City and Perry are centered on the proposed 66-foot right-of-way for this road. This street is an important part of the City's road network.

MOTION: A motion was made by Roger Handy to open the public hearing for application #2913. The motion was seconded by Lynda Berry and passed unanimously.

There was no public input.

MOTION: A motion was made by Paul Fowler to close the public hearing for application #2913. The motion was seconded by Lynda Berry and passed unanimously.

Byron Hansen came forward and stated he is trying to give the City a couple acres of property as well as build the road. He said they would figure out a way, with the City, to come up with the money to build his half of the road; he has 33-feet in Brigham City and Shirlene Peck has 33-feet in Perry. He said they had made a request, which he thought had been accommodated by the City, so they do not have a complete duplication of utilities and services between the Perry side and the Brigham City side. He said he thought the joint planning meeting had resolved some of those issues. He said he felt the road to be critical to future development as that road will become a major relief to the traffic on 1100 South. He said his desire is to get the property dedicated immediately and get the road built in the near future.

Ms. Berry asked if a traffic study had been done. Mr. Bradley said he was not sure if one had been done for the Highway 89 portion. He said the City had purchased the property in Perry to ensure points

A and B would connect. The State will have access along that road as well. A traffic study has been done for the road on the west side of Wal-Mart which will continue down to the Upland Square development. Mr. Fowler asked who would pay for the geotechnical study. Mr. Bradley did not have an answer for that. He said the City is looking at a way to get the road put in, including a special improvement district. It is best for the entire width to go in at the same time in regards to safety, quality of the road, and infrastructure. This project is being viewed as a two-step process. There is an opportunity to get it dedicated in the right location at the right time and come back and finalize all the details of the infrastructure and the funding, which is still being worked on. The road will connect into Commerce Way which is straight across from the south exit out of Wal-Mart.

Ms. Berry commented that she has found it to be very difficult to exit out of the north access across from Hansen Motors because of the traffic that exits out of the southern Wal-Mart access. She thought someone needed to look at that because it appears the road will create a lot more traffic into that area. Mr. Fowler commented that he thought it would eventually take traffic away from north access because it will provide another way to get out of the area and help to alleviate the problem mentioned by Ms. Berry.

MOTION: A motion was made by Roger Handy to forward to the City Council with a recommendation to approve application #2913 with the stipulation that it must comply with the Staff evaluation and with the findings of fact that the applicant will comply with the Staff evaluation and that such use will not under the circumstances of the particular case be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with the Brigham City General Plan. The motion was seconded by Lynda Berry and passed unanimously.

PUBLIC HEARING / APPLICATION #3037 / CLYDE PRICE SUBDIVISION – PRELIMINARY PLAT / 671 & 675 SOUTH MAIN STREET / CLYDE PRICE:

Mr. Bradley explained that Mr. Price's home is lot one. At one time, Mr. Price owned both parcels and had an approval for a mixed use for the gym that is behind the home. Since that time, there has been a sale of property and the intent at this time is to bring it into compliance with the City standards as far as the division of land; the key is to meet those requirements which are very similar and were looked at at the time the mixed use was approved. According to the Staff evaluation, there are a few things that need to be addressed but there is nothing there that cannot be met. What is being worked on is a cross-access agreement that allows the property owners to drive through the area; Mr. Price has a couple of parking stalls to meet his residential requirements for parking as well as some stalls that apply to the gym and there is also a one-way exit out onto Main Street. The plan will increase the hard surface along the north side of the home to provide for the one-way access out. The request is to divide that land, get the appropriate easements in place as part of the recording of the plat and there are some things that still need to be finalized which are noted in the Staff evaluation.

MOTION: A motion was made by Roger Handy to open the public hearing on application #3037. The motion was seconded by Paul Fowler and passed unanimously.

Hollis Thompson, half owner of K&H Fitness Quarter, came forward and stated that he had received the plat on Friday and his lawyer was not able to view it until Monday and was not able to attend this meeting to see it. Mr. Thompson said his lawyer has concerns on it and would like to either postpone the application or find out what they can do. He said the City has not really consulted with them even though they are owner of the parking lot and the party that is the most concerned about where the parking is going to be, which is of concern to them. He asked if anything would be decided on this

application at this meeting. Mr. Bradley commented that the public hearing could be closed or continued to allow Mr. Hollis additional time to review the Staff evaluation.

Clyde Price came forward and stated that he lives next door to the Fitness Quarter. He said he had Hansen & Associates draw up a plan. He sent the Attorney a memo weeks ago and did not receive a response from him. Mr. Price said he wanted to meet with the Board of Adjustments to see if he could get some parking stalls eliminated and he stated that Hollis Thompson stopped him from doing that. He said he has to tear down his garage to meet this, he has to elevate a power line seven feet and he has to put asphalt or concrete down his driveway. On lot number one there are four angle parking stalls, two of which, on the very top end, Mr. Price said belong to him. He said that should not be classified as a cross-easement. Mr. Bradley said it is noted that it can be removed and his own personal parking stalls can be removed as a cross-access because it is his own space and is an item that needs to be cleaned up. Mr. Bradley said he did not realize the attorney did not have a chance to look at it. Mr. Price replied that he had a chance but refused to respond to it; he said he would have taken it over and he asked if he wanted to see it but had no response. He said he has had no cooperation with the Fitness Quarter responding to information. He commented that he saw no reason to defer any of this and asked for it to be approved.

Brent Wyatt came forward and stated that he has done similar things like this before and the only thing he would ask is if this still meets the minimum requirements for the lot size and is not going below the 8,000 square feet. Mr. Wyatt said if it meets that, he does not have a problem with it. He said if they are going to follow the City ordinances then they need to make sure it is done on this application too.

Mr. Price stated he had a letter from their attorney asking why they are dragging their feet on this as it is keeping them from getting a loan. He said to meet the minimum requirements is the only way that they have to go.

MOTION: A motion was made by Roger Handy to continue the public hearing on application #3037 until the next meeting. The motion was seconded by Lynda Berry and passed unanimously.

Mr. Fowler commented that in looking at how the lot is laid out, it seemed to meet the requirements to the inch and he asked Mr. Bradley if there was any flexibility for change in the design or if it is as it needs to be to get through the process. Mr. Bradley replied that the site is very small and very tight. There had to be some adjustments made from what was originally submitted for it to meet the minimum on that lot size. Mr. Bradley stated that the City Attorney will have to approve the language of the cross-access agreement which is the only thing he can imagine that the other property owner's attorney would want to review to make sure he is comfortable with the language that has been drafted by the applicant's engineer. Prior to that plat being signed, it needs to be approved and signed by the City Attorney.

Ms. Berry asked if the neighbor to the north was amenable to the roadway. Mr. Bradley replied that neighbor notifications went out to the neighbors within 300-feet but Mr. Price would have the right to put the driveway there whether he was subdividing the property or not and would not need approval from the neighbor. The one-way access out is on Mr. Price's property and will change from a personal drive to a public drive and is primarily for the stalls in the back of the home due to the narrowness of the drive which will make it a one-way exit. The rest of the parking stalls can continue to use the exit on the south. Because this originally came through as a mixed use, the Planning Commission can consider, as part of this approval, recognizing an amendment to the previous mixed use approval. Ms. Poelman asked to have information for that consideration available to them for the next meeting.

CONTINUATION OF APPLICATION #3058 / CHANGE OF ZONE FROM MU-160 TO R-1-10 / 700 NORTH HIGHLAND / JOHN W. PARSON:

This application was continued in order to have Staff do some research and provide additional information that would be helpful in understanding why it is felt that this area is viable and should be zoned as low density housing. Mr. Bradley stated that Staff had completed that research and proceeded with a visual presentation. In the previous General Plan, the low density stayed right where the homes are located in that area; the rest of the area is in the hillside open-space. As the General Plan update took place, there were workshop meetings that included the Planning Commission members. Staff worked with Envision Utah to prepare a land use map and the text for the General Plan to present it in a public hearing. At the continuation of the public hearing, Mr. Parson spoke on behalf of his property and stated that he would like to see the current proposal not prohibit him from developing his plans in the future and asked the Commission to consider, when developing the General Plan, that the area be zoned the same as the adjacent area to it and not leave it unavailable for development. Mr. Bradley showed a copy of the map that was being presented when that comment from Mr. Parson was made, and from that comment the map was updated. That area was recommended by the previous City Planner, Mark Teuscher, to be made low density, which would accommodate Mr. Parson's request.

Mr. Bradley stated that, as far as Staff could identify, that area was incorporated as low density residential in the General Plan. Mr. Handy asked if there was any record of the Planning Commission taking formal action on that addition and making a motion to change the proposal. Mr. Bradley said it was a general comment on December 6 and then the overall plan was recommended to the City Council. The minutes do not relate to each item and there are only three main areas that were heavily discussed which were the West Forest Street area with the industrial and business park, the Kotter Canyon area, and the road master plan off of 1100 South. The comment was made, taken, and the plan changed and adopted with that comment showing the area to be low density.

Mr. Handy asked if there was any record of precise decisions or motions on any of the changes that were made between the time of the public hearing and when it was taken to the City Council. Mr. Bradley replied that specifically in the February 7th meeting the moderate income housing element was included and there was quite a bit of discussion with that but as far as the actual motion recognizing specific changes, the motion was just to accept what had been discussed and proposed as far as the plan and the text. Ms. Berry asked if the R-1-10 was applicable under the low density description. Mr. Bradley replied that R-1-10 would be considered low density. Mr. Bradley stated that, in his research, there were many that did not recall discussing this property much at all.

Ms. Berry asked about a comment from Community Development in the Staff evaluation regarding some inconsistency with one of the goals regarding the east mountain bench and asked what that comment referred to. Mr. Bradley replied that the inconsistency in the map is showing that the area can be low density but the goal discusses the east mountain bench specifically in talking about the steep areas and servicing steep sloped development that would require significant private investment which would be an expense for the developer, but after being turned over to the City it would become an ongoing public cost to the other citizens of the community to maintain those streets; it also talks about preserving the wildlife on the hillside. Mr. Bradley commented that the slopes were not as steep as anticipated after being provided a better contour map. There are the obstacles of dealing with the fault, power lines, and other things. The Rocky Mountain Power lines would be further up the mountain as well as the Ruby Pipeline that will go even further up. The City will need to look at the impacts and if they can make this development work in a way that will be good for the public without issues such as mudslides and providing services.

The area is currently zoned MU-160 which is a multiple use requiring 160-acres, so it would take having 160-acres to put one house up there. The request is to change that zoning to R-1-10, which would require only 10,000 square feet per lot. The MU-160 zone is primarily on the hillside and more out into

the wetlands area. Ms. Berry commented that since this meets the conditions of the General Plan for residential low density, she asked if that would not usurp the sensitive land goals. Mr. Bradley said this is an item that can go either way and as this is a zone change it becomes a legislative decision of the City Council where the General Plan becomes a guide directing development.

Ms. Poelman commented that there seemed to be innumerable reasons that have been stated to not build there as stated in the Staff evaluation. Mr. Handy stated that he had a problem with acting on this application, at this meeting, because whether it is approved or denied, it would be by a minority of the Planning Commission and he would rather have the City Council hear the full voice of the Planning Commission with a majority vote on a rezoning.

MOTION: A motion was made by Roger Handy to postpone action on application #3058 until the next meeting where a majority of the members of the full Planning Commission can vote on this. The motion was seconded by Lynda Berry.

Roger Handy – Aye
Lynda Berry – Nay
Paul Fowler – Nay

The motion failed.

John Parson came forward and stated that he thought this application had gotten derailed when it started to be considered what happened with the General Plan two or three years ago when in fact he thought there had been an arduous decision process made there that came up with the General Plan and the revisions. Mr. Parson commented that the reason this was changed from open space to MU-160 was because it fits the sensitivity and the slope analysis and they used the topography to determine what they should and should not add to make available for development. He said he felt like that got them way off track. From his position, that is what is allowed in the General Plan. He made the application and has provided all the slope percentages and they are well within the limits and are actually lower than what the Kotter Subdivision was approved for in the past. He said he does not understand the problem as this does not have near the other impacts of other developments that have already been approved. As far as visibility goes, it will be visible, as any new development is, from some perspective. He referred to the Staff comments from the Engineering Department. *This is a proper land use request as previously identified within the General Plan. Once the property is rezoned, the applicant can do additional study to determine if the property is buildable.*

Mr. Parson commented that he thought they were getting all hung up on whether or not the property is buildable, which is something he would have to figure out how to deal with and he cannot move forward to even evaluate it until it is rezoned. He said when one gets to the stage of laying out lots, one will do what is most sellable and most desirable. He said they are really bound on the west by the existing back lots and the slope on the east, so there is not a whole lot that can be done with it. Mr. Parson said he thinks the area is much flatter and more buildable than the photos show. The property line runs right through the old gravel pit and would be the north end of the project. He said the Engineering Department should be reliable and said to support the rezone request. There will be more opportunity to evaluate this as they will have to bring the plat before the Commission.

Mr. Handy commented that the proper place of the Planning Commission is to determine what kind of development they want in that area and it is proper for the Planning Commission to attempt to decide what is best for the City in terms of what could be developed.

Greg Hansen with Hansen & Associates came forward and stated that he felt Mr. Parson's frustration in that he is asking for a rezone and he kept hearing the Planning Commission get hung up on issues that

will be addressed with the preliminary and final plats. He said this property lies below the criteria established for the sensitive hillside development which says that any development or any slopes over 25-percent can still be developed. Mr. Fowler commented that they are looking at rezoning which is something the Commission does not want to take lightly and they need to have the input on that so it can be evaluated. He said they need to know some of the reasons they would actually make a rezoning recommendation to the City Council. Mr. Hansen said he kept hearing reference to issues other than just the rezone, which is the issue at hand, which fits within the General Plan.

Ruth Jensen came forward and stated that she was not representing the City Council at this time but speaking as a citizen. She said she realized this request is for a zoning change and asked if they really need to change it or keep it the way it is. She said she attended some training on citizen planning and there are some things that need to be thought about such as the fault line, landslides, and boulders rolling down the mountain as well as water patterns coming down the mountain. There is some research that needs to be done. Ms. Jensen said she understood the frustration as in it taking a long time but, as she learned in the citizen planning, when it involves something in the General Plan it really needs to be evaluated really well. The General Plan also needs to be updated periodically, a minimum of five years, and she recommended that the Planning Commission look at the General Plan and maybe do some revisions. She said she appreciated the hard work of the Planning Commission and the decisions they make for our community.

Mr. Bradley commented that a letter had been brought in by Mike Ravenberg for the Planning Commission and a copy was also sent to the applicant. Mr. Ravenberg made reference to the Skyline Terrace and the Kotter Subdivisions regarding water patterns. He said this letter would pertain to more of the development stage. Mr. Bradley handed out copies of that letter to the Planning Commissioners.

Ms. Poelman stated that her questions about the slope, the faults and such have bearing on whether or not they would change the zoning and saw no reason not to discuss those types of issues before making a decision.

MOTION: A motion was made by Roger Handy to continue application #3058 until the next Planning Commission meeting where they will hopefully have at least six members of the Planning Commission there to vote on this rezone request. The motion was seconded by Lynda Berry and passed unanimously.

DISCUSSION:

APPLICATION #3076 / REES RICHARDS SUBDIVISION – SKETCH PLAN / 637 EAST 600 SOUTH / REES RICHARDS:

Mr. Bradley stated that this sketch plan was similar to a preliminary plat and is a request that will be coming forward. This is an opportunity to provide feedback to the applicant. They are proposing to carve off a piece of land to create a parcel which would leave a remaining parcel. The homes should be on lots one and two and will not allow for any other division unless there is a sale of property to access it somewhere else. Lot two is large enough to be further subdivided if it is attached to one of the adjoining properties and there is access from another location. There would have to be a power easement to be able to bring service to that piece of property. Mr. Handy asked if there was an orchard on the back property. Mr. Bradley pointed out the existing homes, the property line and where the applicant would like to create another parcel to create another home. The aerial photo was an older photo and it was uncertain what some of the buildings on that property were. Staff is not concerned about doing this as long as a remnant parcel is not created. This is an older area and the street has a half width as well as a full width in this location.

Ms. Poelman had a question about the developer that was being discussed in the public comment portion of the meeting. She asked how the City addressed a situation where the developer moves

forward and installs something that is difficult to remove but the work done is not in compliance with the original understanding. Mr. Bradley replied that he was not part of the process during the Chad Thompson development but, in going through the minutes, he said it was clear that there had been discussion about the tree types and sizes as well as changing the safety fence from 3-feet to 4-feet. It really did not relate to a change in the landscape width between the parking lot and the property owner's back lot. Ms. Poelman said she recalled Mr. Thompson as being willing to go along with having a certain amount of footage between the adjoining property owner and his land. Mr. Fowler stated that the observations, comments and discussion that they had was all based on the plan that had been presented on paper. He said he did not think anyone would have qualms over a couple of inches but he said he would consider 9-feet to be a significant change and whether it was specifically stated or not, at the time it was being explained, it was premised to the drawing that had been presented. Mr. Handy stated that was the application they had approved. Mr. Fowler asked how they proceed from this point.

Mr. Bradley said he discussed with Mr. Thompson the condition of the height which was spelled out in the motion. In the approved plans, it carried over the 3-feet from the previous plan set that was shown to the Planning Commission; that oversight was not caught by the City and was not addressed by the applicant. Mr. Fowler stated that their concern is, based on the citizen comments from earlier in this meeting, that it appeared things are happening differently than what had been approved and he asked what steps they can take to stop the work or correct the work. Ms. Berry asked if there would be a legal problem if anything is done, at this point, since it has been approved. Mr. Bradley replied that, in regards to the area that had been referred to, which is a 5-foot landscape strip between the building and that sidewalk, if it is not a life-safety issue and the City has already given a stamp of approval the developer has some right to be able to rely on those plans. Mr. Bradley replied that the only thing that could be done is to improve the process, the system of review, to ensure that what the Planning Commission approves and requires, which is recorded in the minutes, is addressed, checked off and done.

Mr. Fowler reiterated that their attention had been brought to a situation that has arisen and he asked what they need to do about it and how they should proceed. Mr. Bradley replied that the only issue he could see, that is a valid concern, is the 5-foot landscape area between the sidewalk and the building. In the minutes one of the Commissioners asked Mr. Thompson if he would be addressing that and he stated that he would; it was not labeled in the motion as an item of condition for that approval. Whether Staff missed that to follow up with it or felt that it still met the intent of what that ordinance is, to make sure it is in compliance, Mr. Bradley commented that he did not see that the City is in a position to have the developer rip that out and start over. Mr. Fowler stated that there is a difference in what they interpreted what they approved, based on the plans they saw, and what the City has interpreted; which is what he felt was the initial problem. Mr. Bradley stated that he did not see that the City should be doing anything differently than what has been done out there at this time. Mr. Thompson has been contacted and he is going to make sure that fence is 4-feet high.

Mr. Fowler said he did not know what the proper procedure is and there are probably several changes there that are different than the plans they saw. He stated that, as a citizen, he would have to review them and take a look at them. Mr. Bradley commented that if they need to change the policy of how the plans are reviewed and have the Planning Commission be the final decision maker, which could be something the City can look at but that is why the City has a full-time staff. An applicant is to be in compliance with the Code and a Planning Commission or City Council should never have to list each those things out specifically.

Ms. McArthur commented from the audience that they asked the Planning Commission to look at one code and make a change, as there were a lot of safety issues and concerns, and she asked why that one code was ignored. Mr. Bradley replied that the Staff he had spoken with had talked to the Attorneys and this is how the ordinance has been addressed which is how they felt the intent of the

ordinance had been, to be able to provide landscape around that parking lot. If the sidewalk was not put up against the building there would be no path to the door. Mr. Bradley stated that he understood the concern because it is a valid one and said the system needs to be improved to be more business friendly and to protect the interest of the community. He said the 5-foot sidewalk is up against the building as a path which was not a condition of approval; there was discussion that he would address it which he did not and Staff did not catch that issue.

MOTION: A motion was made by Roger Handy to place this item for discussion and any other follow-up items that Mr. Bradley might have about how these changes came about. How they need to address motions in the future be placed on the next agenda and that they adjourn for the evening. The motion was seconded by Lynda Berry.

DISCUSSION: Ms. Poelman added that she would like to have the minutes from that meeting to review. Mr. Fowler explained that, when they approved that application, because there had been lengthy and confusing discussion and multiple meetings one of the contingencies they put on there was that everything be corrected and brought up to speed; the Staff recommendations, the recommendations they had made at various meetings and put into the finalized plan. He said he remembered this because he made the motion. He said it would not only be the minutes of that meeting but also the other meetings where they discussed it.

MOTION: A motion was made by Paul Fowler to amend the motion to include that they would need all discussion that is pertinent to that application. Ms. Berry asked for a copy of the plan that exists now and a copy of the plan that existed when they discussed that application.

Ms. Poelman asked if it would be considered to have the minutes be at the end of the agenda rather than at the beginning of the agenda; rather than having the corrections of the line items when it does not have anything to do with the public concern. Mr. Handy commented that in some cases he could see that it would not be a good idea if they are dealing with items that have been carried over from previous meetings. He suggested that they define what the record is before moving on.

The motion was seconded by Lynda Berry and passed unanimously.

The meeting adjourned at 8:35 p.m.

This certifies that the regular meeting minutes of October 07, 2008 are a true and accurate copy as approved by the Planning Commission on November 04, 2008.

Signed: _____
Jeffery R. Leishman, Secretary